

The following additional comments about the combination of the teachings of Tobler and Devine and Kruger are presented to help the Examiner see that the combination of these references does not make sense or would not be logical or obvious to one skilled in the art:

A) Tobler + Devine:

Tobler relates to herbicides of a new chemical class which can be considered as analogues of the instantly used compounds of the formula I, and certain safeners. Devine relates to old herbicides different from those of Tobler and old safeners different from those recited in Tobler. As the behavior of a mixture of a given herbicide with a given safener is unpredictable, combination of these references is inappropriate. And even if a combination was made, the result thereof would be different from the claimed subject matter. Note in this connection, that mefenpyr, presently claimed as the safener in the instant application, was not even known at the date of the Devine reference. Mefenpyr is not mentioned in the 10th edition of the Pesticide Manual of 1994, whereas the date of the Devine reference is 1993.

B) Tobler + Krüger:

Since Kruger fails to disclose any safeners but only refers to herbicides similar to those of Tobler, a combination would mean that the resulting herbicidal mixture contains the safeners according to Tobler and the herbicides according to Kruger, which again are different from the inventive subject matter.

C) Devine + Kruger:

This combination would lead to herbicidal mixtures containing herbicides similar to those of Tobler and the safeners according to Devine. Again, this composition is different from the claimed subject matter.

In view of A), B) and C) above, Applicant submits that there is no logical basis to combine the teachings of Tobler and Devine and Kruger, and that such a combination would still not arrive at the claimed composition.

It should be emphasized again the importance of the statement made on page 1 of the present specification that **a particular safener is often only suitable for a particular crop and a particular herbicide**. This statement is very well accepted in the art and it can also be found (in different words) in the Devine reference on page 380, middle of the first full paragraph: "In particular ... much lower." This means that there is no basis for a general concept that teaches that every safener (for example those mentioned in the present application but not mentioned in the art cited) is a safener for every herbicide. It appears that the Examiner in this case is applying an incorrect concept. In contrast to this, a safening effect **cannot be predicted**. For example, a safener "A" which is known to safen a given herbicide is often unable to safen a different herbicide. This is what is determined in field trials; as is known in the art. In other words, it cannot be concluded that

the finding of a safening effect of safener "A" in view of the given herbicide is also found in view of a second herbicide. Such a finding is unpredictable, surprising and thus inventive.

In the light of this statement, the Examiner's argumentation appears to be senseless. The attempts to combine these references would be unacceptable from the artisan's point of view. It is clear that these references - taken alone or in combination - fail to render the claimed combination of herbicide and safener obvious, as no teaching is provided to exchange the prior art safeners for the inventively used ones of the present invention in order to arrive at the inventive combinations. As stated by the Examiner (page 4, last sentence), "the safening effect is very specific and changes with the structure of the compound and the herbicide used." The rejection of claims 1-12 under 35 U.S.C. §103(a) therefore has no basis when you consider this statement by the Examiner.

Withdrawal of the rejection of claims 1-12 under 35 U.S.C. §103(a) is respectfully requested. Early and favorable issuance of a notice of allowability is hereby requested.

Enclosed herewith is a Notice of Appeal.

Respectfully submitted,

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